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HANLEY, FLIGHT & ZIMMERMAN, LLC
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CHICAGO IL 60606

APPLICANT: FISCHBACH et al.
SERIAL NO. 10/728,403
FILED: December 5, 2003
DOCKET # 20020/10012

:PETITION FOR WITHDRAWAL
:OF RESTRICTION REQUIREMENT

FOR: METHOD AND APPARATUS TO LOCK
A DUST COVER IN A FIREARM HOUSING

This is in response to the petition filed on June 12, 2006 for withdrawal of the restriction requirement mailed on 8/31/2005.

The petition is GRANTED.

FACTS

On December 2, 2004, a non-final office action was mailed rejecting claims 1-23.

On June 2, 2005, applicant filed a response to the rejection.

On August 31, 2005, a requirement for restriction was mailed restricting claims 22-23 from claims 1-21.

On October 3, 2005, applicant filed an election provisionally electing claims 1-21 with traverse. Applicant further amended claims 22-23 to include the limitations of claim 1.

On December 8, 2005, applicant mailed a non-final office action and made the restriction requirement final.

On June 12, 2006, a response to the office action was filed as well as the instant petition. These papers had a certificate of mailing dated June 8, 2006.

DISCUSSION

Applicant sets forth a number of reasons why the restriction is improper. However, rather than discussing each and every issue a cursory review of the remarks and the restriction requirement results in the following:

Applicant argues that the grouping of the claims as combination-subcombination is an improper indication of restriction since applicant has amended claims 22 and 23 to include the limitations of claim 1.

Restriction between a combination and subcombination is proper when it can be shown that the combination does not require the specifics of the subcombination as claimed for patentability, and that the subcombination has utility by itself or in other combinations. However, if a claim is present that is evidence that the details of a combination claim does not rely upon the details of the subcombination for patentability, then restriction may be proper.

The reasoning presented by the examiner sets forth a combination-subcombination restriction in light of an evidence claim. A review of these claims does not show that the combination, presumably claims 22 and 23, do not rely on the subcombination, presumably claim 1, for patentability, when considering claim 13 as an evidence claim. Therefore the restriction as set forth is improper and is hereby withdrawn.

Applicant is reminded that a response is due to the Office action mailed on August 21, 2006.

The petition is GRANTED.

Any question concerning this decision should be referred to SPE Michael Carone at 571-272-6873.


Donald Hajec
Director, TC 3600

